

AMENDED IN ASSEMBLY APRIL 27, 2004

AMENDED IN ASSEMBLY APRIL 16, 2004

AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2611

Introduced by Assembly Member Simitian

February 20, 2004

An act to amend ~~Sections 368 and 803~~ *Section 368* of the Penal Code, and to amend ~~Sections 15610.30, 15630, and~~ *Section 15657* of, and to add *Section 15630.2* to, the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2611, as amended, Simitian. Elder and dependent adult abuse.

(1) Existing law proscribes crimes against elder and dependent adults involving physical and financial abuse.

Existing law establishes criminal penalties for the willful abuse of an elder or dependent adult, when the person who permits or inflicts the abuse has knowledge that the victim is an elder or dependent adult.

This bill would revise the above standard to impose the existing penalties ~~when~~ *regardless of whether* the person has ~~reasonable~~ knowledge that the victim may be an elder or dependent adult.

~~(2) Existing law prescribes the time by which prosecution for various criminal offenses must be commenced, and prohibits the tolling or extension of these time limitations except under prescribed circumstances. Under existing law, the applicable period of limitation~~

~~for any of certain designated offenses does not commence to run until the discovery of the offense.~~

~~This bill would provide that the failure to report physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult to the list of offenses for which the period of limitations does not commence until one year after discovery of the offense, but in no event more than 3 years after the offense itself.~~

~~(3) By changing the definition of an existing crime this bill would impose a state-mandated local program.~~

(2) The Elder Abuse and Dependent Adult Civil Protection Act requires persons characterized as mandated reporters to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, ~~and provides that any mandated reporter who does not make the report is guilty of a misdemeanor. Existing law defines “financial abuse” for the purposes of the act.~~

~~This bill would revise the definition of financial abuse under the act. The bill would include financial institutions subject to regulation by the Commissioner of Financial Institutions or certain federal regulators as mandated reporters under the act in cases of elder financial abuse. The bill would thereby require, thereby requiring these entities to report those cases to the adult protective services agency or the local law enforcement agency. Because a violation of this provision would be a crime, the bill would impose a state-mandated local program.~~

~~(4)~~

(3) Existing law includes provisions relating to the award of attorney’s fees and costs, and damages to a plaintiff, when it is proven by clear and convincing evidence that a defendant is liable for physical abuse, neglect, or financial abuse, and the defendant has also been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse.

This bill would revise these provisions to change the standard for the commission of financial abuse and the proof of recklessness, oppression, fraud, or malice for financial abuse to a preponderance of the evidence. The bill would also extend the above provisions to a defendant who has demonstrated or exhibited, recklessness, oppression, fraud, or malice in the commission of the described elder or dependent adult abuse. ~~{BDO75}(5)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 368 of the Penal Code is amended to
2 read:

3 368. (a) The Legislature finds and declares that crimes
4 against elders and dependent adults are deserving of special
5 consideration and protection, not unlike the special protections
6 provided for minor children, because elders and dependent adults
7 may be confused, on various medications, mentally or physically
8 impaired, or incompetent, and therefore less able to protect
9 themselves, to understand or report criminal conduct, or to testify
10 in court proceedings on their own behalf.

11 (b) (1) Any person who, under circumstances or conditions
12 likely to produce great bodily harm or death, willfully causes or
13 permits any elder or dependent adult to suffer, or inflicts thereon
14 unjustifiable physical pain or mental suffering, or having the care
15 or custody of any elder or dependent adult, willfully causes or
16 permits the person or health of the elder or dependent adult to be
17 injured, or willfully causes or permits the elder or dependent adult
18 to be placed in a situation in which his or her person or health is
19 endangered, is punishable by imprisonment in a county jail not
20 exceeding one year, or by a fine not to exceed six thousand dollars
21 (\$6,000), or by both that fine and imprisonment, or by
22 imprisonment in the state prison for two, three, or four years.

23 (2) If in the commission of an offense described in paragraph
24 (1), the victim suffers great bodily injury, as defined in Section
25 12022.7, the defendant shall receive an additional term in the state
26 prison as follows:

27 (A) Three years if the victim is under 70 years of age.

28 (B) Five years if the victim is 70 years of age or older.

29 (3) If in the commission of an offense described in paragraph
30 (1), the defendant proximately causes the death of the victim, the

1 defendant shall receive an additional term in the state prison as
2 follows:

3 (A) Five years if the victim is under 70 years of age.

4 (B) Seven years if the victim is 70 years of age or older.

5 (c) Any person who, under circumstances or conditions other
6 than those likely to produce great bodily harm or death, willfully
7 causes or permits any elder or dependent adult to suffer, or inflicts
8 thereon unjustifiable physical pain or mental suffering, or having
9 the care or custody of any elder or dependent adult, willfully
10 causes or permits the person or health of the elder or dependent
11 adult to be injured or willfully causes or permits the elder or
12 dependent adult to be placed in a situation in which his or her
13 person or health may be endangered, is guilty of a misdemeanor.
14 A second or subsequent violation of this subdivision is punishable
15 by a fine not to exceed two thousand dollars (\$2,000), or by
16 imprisonment in a county jail not to exceed one year, or by both
17 that fine and imprisonment.

18 (d) Any person who is not a caretaker who violates any
19 provision of law proscribing theft, embezzlement, forgery, or
20 fraud, or who violates Section 530.5 proscribing identity theft,
21 with respect to the property or personal identifying information of
22 an elder or a dependent adult is subject to imprisonment in a county
23 jail not exceeding one year, or in the state prison for two, three, or
24 four years, when the money, labor, goods, services, or real or
25 personal property taken or obtained is of a value exceeding four
26 hundred dollars (\$400); and by a fine not exceeding one thousand
27 dollars (\$1,000), by imprisonment in a county jail not exceeding
28 one year, or by both that fine and imprisonment, when the money,
29 labor, goods, services, or real or personal property taken or
30 obtained is of a value not exceeding four hundred dollars (\$400).

31 (e) Any caretaker of an elder or a dependent adult who violates
32 any provision of law proscribing theft, embezzlement, forgery, or
33 fraud, or who violates Section 530.5 proscribing identity theft,
34 with respect to the property or personal identifying information of
35 that elder or dependent adult, is subject to imprisonment in a
36 county jail not exceeding one year, or in the state prison for two,
37 three, or four years when the money, labor, goods, services, or real
38 or personal property taken or obtained is of a value exceeding four
39 hundred dollars (\$400), and by a fine not exceeding one thousand
40 dollars (\$1,000), by imprisonment in a county jail not exceeding

1 one year, or by both that fine and imprisonment, when the money,
2 labor, goods, services, or real or personal property taken or
3 obtained is of a value not exceeding four hundred dollars (\$400).

4 (f) Any person who commits the false imprisonment of an elder
5 or a dependent adult by the use of violence, menace, fraud, or
6 deceit is subject to imprisonment in the state prison for two, three,
7 or four years.

8 (g) As used in this section, “elder” means any person who is
9 65 years of age or older.

10 (h) As used in this section, “dependent adult” means any
11 person who is between the ages of 18 and 64, who has physical or
12 mental limitations which restrict his or her ability to carry out
13 normal activities or to protect his or her rights, including, but not
14 limited to, persons who have physical or developmental
15 disabilities or whose physical or mental abilities have diminished
16 because of age. “Dependent adult” includes any person between
17 the ages of 18 and 64 who is admitted as an inpatient to a 24-hour
18 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
19 the Health and Safety Code.

20 (i) As used in this section, “caretaker” means any person who
21 has the care, custody, or control of, or who stands in a position of
22 trust with, an elder or a dependent adult.

23 (j) Nothing in this section shall preclude prosecution under
24 both this section and Section 187 or 12022.7 or any other provision
25 of law. However, a person shall not receive an additional term of
26 imprisonment under both paragraphs (2) and (3) of subdivision (b)
27 for any single offense, nor shall a person receive an additional term
28 of imprisonment under both Section 12022.7 and paragraph (2) or
29 (3) of subdivision (b) for any single offense.

30 ~~SEC. 2.—Section 803 of the Penal Code is amended to read:~~

31 ~~803.—(a) Except as provided in this section, a limitation of~~
32 ~~time prescribed in this chapter is not tolled or extended for any~~
33 ~~reason.~~

34 ~~(b) No time during which prosecution of the same person for~~
35 ~~the same conduct is pending in a court of this state is a part of a~~
36 ~~limitation of time prescribed in this chapter.~~

37 ~~(c) A limitation of time prescribed in this chapter does not~~
38 ~~commence to run until the discovery of an offense described in this~~
39 ~~subdivision. This subdivision applies to an offense punishable by~~
40 ~~imprisonment in the state prison, a material element of which is~~

~~1 fraud or breach of a fiduciary obligation, the commission of the
2 crimes of theft or embezzlement upon an elder or dependent adult,
3 or the basis of which is misconduct in office by a public officer,
4 employee, or appointee, including, but not limited to, the
5 following offenses:~~

~~6 (1) Grand theft of any type, forgery, falsification of public
7 records, or acceptance of a bribe by a public official or a public
8 employee.~~

~~9 (2) A violation of Section 72, 118, 118a, 132, or 134.~~

~~10 (3) A violation of Section 25540, of any type, or Section 25541
11 of the Corporations Code.~~

~~12 (4) A violation of Section 1090 or 27443 of the Government
13 Code.~~

~~14 (5) Felony welfare fraud or Medi-Cal fraud in violation of
15 Section 11483 or 14107 of the Welfare and Institutions Code.~~

~~16 (6) Felony insurance fraud in violation of Section 548 or 550
17 of this code or former Section 1871.1, or Section 1871.4, of the
18 Insurance Code.~~

~~19 (7) A violation of Section 580, 581, 582, 583, or 584 of the
20 Business and Professions Code.~~

~~21 (8) A violation of Section 22430 of the Business and
22 Professions Code.~~

~~23 (9) A violation of Section 10690 of the Health and Safety Code.~~

~~24 (10) A violation of Section 529a.~~

~~25 (11) A violation of subdivision (d) or (e) of Section 368.~~

~~26 (12) (A) A violation of subdivision (h) of Section 15630 of the
27 Welfare and Institutions Code, pursuant to subparagraph (B).~~

~~28 (B) A limitation of time for a violation of subdivision (h) of
29 Section 15630 of the Welfare and Institutions Code shall not
30 commence to run until one year after the discovery of the violation.
31 However, in no event shall a limitation of time under this
32 paragraph commence to run more than three years after the offense
33 itself.~~

~~34 (d) If the defendant is out of the state when or after the offense
35 is committed, the prosecution may be commenced as provided in
36 Section 804 within the limitations of time prescribed by this
37 chapter, and no time up to a maximum of three years during which
38 the defendant is not within the state shall be a part of those
39 limitations.~~

~~(c) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.~~

~~(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.~~

~~(2) For purposes of this subdivision, a “responsible adult” or “agency” means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:~~

~~(A) The limitation period specified in Section 800 or 801 has expired.~~

~~(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in either Section 800 or 801.~~

~~(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1990, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:~~

~~(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.~~

~~(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.~~

~~(iii) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.~~

~~(iv) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is or was filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.~~

~~(B) (i) If the victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.~~

~~(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.~~

1 ~~(iii) Any ruling regarding the retroactivity of this subdivision~~
2 ~~or its constitutionality made in the course of the previous~~
3 ~~proceeding, including any review proceeding, shall not be binding~~
4 ~~upon refiling.~~

5 ~~(g) (1) Notwithstanding any other limitation of time described~~
6 ~~in this chapter, a criminal complaint may be filed within one year~~
7 ~~of the date of a report to a California law enforcement agency by~~
8 ~~a person of any age alleging that he or she, while under the age of~~
9 ~~18 years, was the victim of a crime described in Section 261, 286,~~
10 ~~288, 288a, 288.5, 289, or 289.5.~~

11 ~~(2) This subdivision applies only if both of the following occur:~~

12 ~~(A) The limitation period specified in Section 800 or 801 has~~
13 ~~expired.~~

14 ~~(B) The crime involved substantial sexual conduct, as~~
15 ~~described in subdivision (b) of Section 1203.066, excluding~~
16 ~~masturbation that is not mutual, and there is independent evidence~~
17 ~~that clearly and convincingly corroborates the victim's allegation.~~
18 ~~No evidence may be used to corroborate the victim's allegation~~
19 ~~that otherwise would be inadmissible during trial. Independent~~
20 ~~evidence does not include the opinions of mental health~~
21 ~~professionals.~~

22 ~~(3) (A) This subdivision applies to a cause of action arising~~
23 ~~before, on, or after January 1, 1994, the effective date of this~~
24 ~~subdivision, and it shall revive any cause of action barred by~~
25 ~~Section 800 or 801 if any of the following occurred or occurs:~~

26 ~~(i) The complaint or indictment was filed on or before January~~
27 ~~1, 1997, and it was filed within the time period specified in this~~
28 ~~subdivision.~~

29 ~~(ii) The complaint or indictment is or was filed subsequent to~~
30 ~~January 1, 1997, and it is or was filed within the time period~~
31 ~~specified within this subdivision.~~

32 ~~(iii) The victim made the report required by this subdivision to~~
33 ~~a law enforcement agency after January 1, 1994, and a complaint~~
34 ~~or indictment was not filed within the time period specified in this~~
35 ~~subdivision, but a complaint or indictment is filed no later than 180~~
36 ~~days after the date on which either a published opinion of the~~
37 ~~California Supreme Court, deciding the question of whether~~
38 ~~retroactive application of this subdivision is constitutional,~~
39 ~~becomes final or the United States Supreme Court files an opinion~~

1 ~~deciding the question of whether retroactive application of this~~
2 ~~subdivision is constitutional, whichever occurs first.~~

3 ~~(iv) The victim made the report required by this subdivision to~~
4 ~~a law enforcement agency after January 1, 1994, and a complaint~~
5 ~~or indictment was filed within the time period specified in this~~
6 ~~subdivision, but the indictment, complaint, or subsequently filed~~
7 ~~information was dismissed, but a new complaint or indictment is~~
8 ~~filed no later than 180 days after the date on which either a~~
9 ~~published opinion of the California Supreme Court, deciding the~~
10 ~~question of whether retroactive application of this subdivision is~~
11 ~~constitutional, becomes final or the United States Supreme Court~~
12 ~~files an opinion deciding the question of whether retroactive~~
13 ~~application of this subdivision is constitutional, whichever occurs~~
14 ~~first.~~

15 ~~(B) (i) If the victim made the report required by this~~
16 ~~subdivision to a law enforcement agency after January 1, 1994,~~
17 ~~and a complaint or indictment was filed within the time period~~
18 ~~specified in this subdivision, but the indictment, complaint, or~~
19 ~~subsequently filed information was dismissed, a new complaint or~~
20 ~~indictment may be filed notwithstanding any other provision of~~
21 ~~law, including, but not limited to, subdivision (c) of Section 871.5~~
22 ~~and subdivision (b) of Section 1238.~~

23 ~~(ii) An order dismissing an action filed under this subdivision,~~
24 ~~which is entered or becomes effective at any time prior to 180 days~~
25 ~~after the date on which either a published opinion of the California~~
26 ~~Supreme Court, deciding the question of whether retroactive~~
27 ~~application of this section is constitutional, becomes final or the~~
28 ~~United States Supreme Court files an opinion deciding the~~
29 ~~question of whether retroactive application of this subdivision is~~
30 ~~constitutional, whichever occurs first, shall not be considered an~~
31 ~~order terminating an action within the meaning of Section 1387.~~

32 ~~(iii) Any ruling regarding the retroactivity of this subdivision~~
33 ~~or its constitutionality made in the course of the previous~~
34 ~~proceeding, by any trial court or any intermediate appellate court,~~
35 ~~shall not be binding upon refiling.~~

36 ~~(h) (1) Notwithstanding any other limitation of time described~~
37 ~~in this chapter, a criminal complaint may be filed within one year~~
38 ~~of the date of a report to a California law enforcement agency by~~
39 ~~a person under 21 years of age, alleging that he or she, while under~~

1 18 years of age, was the victim of a crime described in Section 261,
2 286, 288, 288a, 288.5, 289, or 289.5.

3 (2) This subdivision applies only if both of the following occur:

4 (A) The limitation period specified in Section 800 or 801 has
5 expired:

6 (B) The crime involved substantial sexual conduct, as
7 described in subdivision (b) of Section 1203.066, excluding
8 masturbation that is not mutual, and there is independent evidence
9 that corroborates the victim's allegation. No evidence may be used
10 to corroborate the victim's allegation that otherwise would be
11 inadmissible during trial. Independent evidence does not include
12 the opinions of mental health professionals.

13 (3) This subdivision applies to a cause of action arising before,
14 on, or after January 1, 2002, the effective date of this subdivision,
15 and it shall revive any cause of action barred by Section 800 or 801
16 if the complaint or indictment was filed within the time period
17 specified by this subdivision.

18 (i) (1) Notwithstanding the limitation of time described in
19 Section 800, the limitations period for commencing prosecution
20 for a felony offense described in subparagraph (A) of paragraph
21 (2) of subdivision (a) of Section 290, where the limitations period
22 set forth in Section 800 has not expired as of January 1, 2001, or
23 the offense is committed on or after January 1, 2001, shall be 10
24 years from the commission of the offense, or one year from the
25 date on which the identity of the suspect is conclusively
26 established by DNA testing, whichever is later, provided,
27 however, that the one-year period from the establishment of the
28 identity of the suspect shall only apply when either of the
29 following conditions is met:

30 (A) For an offense committed prior to January 1, 2001,
31 biological evidence collected in connection with the offense is
32 analyzed for DNA type no later than January 1, 2004.

33 (B) For an offense committed on or after January 1, 2001,
34 biological evidence collected in connection with the offense is
35 analyzed for DNA type no later than two years from the date of the
36 offense:

37 (2) In the event the conditions set forth in subparagraph (A) or
38 (B) of paragraph (1) are not met, the limitations period for
39 commencing prosecution for a felony offense described in
40 subparagraph (A) of paragraph (2) of subdivision (a) of Section

290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense.

(3) For purposes of this section, “DNA” means deoxyribonucleic acid.

(j) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

(k) (1) In a criminal investigation involving child sexual abuse as described in subdivision (g) or (h), when the limitations period set forth therein has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of that litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(2) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(3) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(l) As used in subdivisions (f), (g), and (h), Section 289.5 refers to the statute enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

SEC. 3. Section 15610.30 of the Welfare and Institutions Code is amended to read:

15610.30. (a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Wrongfully takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult.

1 ~~(2) Assists in wrongfully taking, secreting, appropriating, or~~
2 ~~retaining real or personal property of an elder or dependent adult.~~

3 ~~(b) A person or entity shall be deemed to have acted wrongfully~~
4 ~~if the person or entity knew or reasonably should have known that~~
5 ~~the elder or dependent adult had the right to have the property~~
6 ~~transferred or made readily available to the elder or dependent~~
7 ~~adult or to his or her representative.~~

8 ~~(c) For purposes of this section, “representative” means a~~
9 ~~person or entity that is either of the following:~~

10 ~~(1) A conservator, trustee, or other representative of the estate~~
11 ~~of an elder or dependent adult.~~

12 ~~(2) An attorney in fact of an elder or dependent adult who acts~~
13 ~~within the authority of the power of attorney.~~

14 ~~SEC. 4. Section 15630 of the Welfare and Institutions Code~~
15 ~~is amended to read:~~

16 ~~15630. (a) Any person who has assumed full or intermittent~~
17 ~~responsibility for care or custody of an elder or dependent adult,~~
18 ~~whether or not that person receives compensation, including~~
19 ~~administrators, supervisors, and any licensed staff of a public or~~
20 ~~private facility that provides care or services for elder or dependent~~
21 ~~adults, or any elder or dependent adult care custodian, health~~
22 ~~practitioner, clergy member, or employee of a county adult~~
23 ~~protective services agency or a local law enforcement agency, is~~
24 ~~a mandated reporter.~~

25 ~~(b) (1) Any mandated reporter who, in his or her professional~~
26 ~~capacity, or within the scope of his or her employment, has~~
27 ~~observed or has knowledge of an incident that reasonably appears~~
28 ~~to be physical abuse, abandonment, abduction, isolation, financial~~
29 ~~abuse, or neglect, or is told by an elder or dependent adult that he~~
30 ~~or she has experienced behavior, including an act or omission,~~
31 ~~constituting physical abuse, abandonment, abduction, isolation,~~
32 ~~financial abuse, or neglect, or reasonably suspects that abuse, shall~~
33 ~~report the known or suspected instance of abuse by telephone~~
34 ~~immediately or as soon as practicably possible, and by written~~
35 ~~report sent within two working days, as follows:~~

36 ~~(A) If the abuse has occurred in a long-term care facility, except~~
37 ~~a state mental health hospital or a state developmental center, the~~
38 ~~report shall be made to the local ombudsman or the local law~~
39 ~~enforcement agency.~~

1 Except in an emergency, the local ombudsman and the local law
2 enforcement agency shall, as soon as practicable, do all of the
3 following:

4 (i) Report to the State Department of Health Services any case
5 of known or suspected abuse occurring in a long-term health care
6 facility, as defined in subdivision (a) of Section 1418 of the Health
7 and Safety Code.

8 (ii) Report to the State Department of Social Services any case
9 of known or suspected abuse occurring in a residential care facility
10 for the elderly, as defined in Section 1569.2 of the Health and
11 Safety Code, or in an adult day care facility, as defined in
12 paragraph (2) of subdivision (a) of Section 1502.

13 (iii) Report to the State Department of Health Services and the
14 California Department of Aging any case of known or suspected
15 abuse occurring in an adult day health care center, as defined in
16 subdivision (b) of Section 1570.7 of the Health and Safety Code.

17 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse
18 any case of known or suspected criminal activity.

19 (B) If the suspected or alleged abuse occurred in a state mental
20 hospital or a state developmental center, the report shall be made
21 to designated investigators of the State Department of Mental
22 Health or the State Department of Developmental Services, or to
23 the local law enforcement agency.

24 Except in an emergency, the local law enforcement agency
25 shall, as soon as practicable, report any case of known or suspected
26 criminal activity to the Bureau of Medi-Cal Fraud and Elder
27 Abuse.

28 (C) If the abuse has occurred any place other than one described
29 in subparagraph (A), the report shall be made to the adult
30 protective services agency or the local law enforcement agency.

31 (2) (A) A mandated reporter who is a clergy member who
32 acquires knowledge or reasonable suspicion of elder or dependent
33 adult abuse during a penitential communication is not subject to
34 paragraph (1). For purposes of this subdivision, "penitential
35 communication" means a communication that is intended to be in
36 confidence, including, but not limited to, a sacramental confession
37 made to a clergy member who, in the course of the discipline or
38 practice of his or her church, denomination, or organization is
39 authorized or accustomed to hear those communications and under
40 the discipline tenets, customs, or practices of his or her church,

1 ~~denomination, or organization, has a duty to keep those~~
2 ~~communications secret.~~

3 ~~(B) Nothing in this subdivision shall be construed to modify or~~
4 ~~limit a clergy member's duty to report known or suspected elder~~
5 ~~and dependent adult abuse when he or she is acting in the capacity~~
6 ~~of a care custodian, health practitioner, or employee of an adult~~
7 ~~protective agency.~~

8 ~~(C) Notwithstanding any other provision in this section, a~~
9 ~~clergy member who is not regularly employed on either a full time~~
10 ~~or part-time basis in a long-term care facility or does not have care~~
11 ~~or custody of an elder or dependent adult shall not be responsible~~
12 ~~for reporting abuse or neglect that is not reasonably observable or~~
13 ~~discernible to a reasonably prudent person having no specialized~~
14 ~~training or experience in elder or dependent care.~~

15 ~~(3) (A) A mandated reporter who is a physician and surgeon,~~
16 ~~a registered nurse, or a psychotherapist, as defined in Section 1010~~
17 ~~of the Evidence Code, shall not be required to report, pursuant to~~
18 ~~paragraph (1), an incident where all of the following conditions~~
19 ~~exist:~~

20 ~~(i) The mandated reporter has been told by an elder or~~
21 ~~dependent adult that he or she has experienced behavior~~
22 ~~constituting physical abuse, abandonment, abduction, isolation,~~
23 ~~financial abuse, or neglect.~~

24 ~~(ii) The mandated reporter is not aware of any independent~~
25 ~~evidence that corroborates the statement that the abuse has~~
26 ~~occurred.~~

27 ~~(iii) The elder or dependent adult has been diagnosed with a~~
28 ~~mental illness or dementia, or is the subject of a court-ordered~~
29 ~~conservatorship because of a mental illness or dementia.~~

30 ~~(iv) In the exercise of clinical judgment, the physician and~~
31 ~~surgeon, the registered nurse, or the psychotherapist, as defined in~~
32 ~~Section 1010 of the Evidence Code, reasonably believes that the~~
33 ~~abuse did not occur.~~

34 ~~(B) This paragraph shall not be construed to impose upon~~
35 ~~mandated reporters a duty to investigate a known or suspected~~
36 ~~incident of abuse and shall not be construed to lessen or restrict any~~
37 ~~existing duty of mandated reporters.~~

38 ~~(4) (A) In a long-term care facility, a mandated reporter shall~~
39 ~~not be required to report as a suspected incident of abuse, as~~

1 defined in Section 15610.07, an incident where all of the following
2 conditions exist:

3 (i) ~~The mandated reporter is aware that there is a proper plan~~
4 ~~of care.~~

5 (ii) ~~The mandated reporter is aware that the plan of care was~~
6 ~~properly provided or executed.~~

7 (iii) ~~A physical, mental, or medical injury occurred as a result~~
8 ~~of care provided pursuant to clause (i) or (ii).~~

9 (iv) ~~The mandated reporter reasonably believes that the injury~~
10 ~~was not the result of abuse.~~

11 (B) ~~This paragraph shall not be construed to require a mandated~~
12 ~~reporter to seek, nor to preclude a mandated reporter from seeking,~~
13 ~~information regarding a known or suspected incident of abuse~~
14 ~~prior to reporting. This paragraph shall apply only to those~~
15 ~~categories of mandated reporters that the State Department of~~
16 ~~Health Services determines, upon approval by the Bureau of~~
17 ~~Medi-Cal Fraud and Elder Abuse and the state long-term care~~
18 ~~ombudsman, have access to plans of care and have the training and~~
19 ~~experience necessary to determine whether the conditions~~
20 ~~specified in this section have been met.~~

21 (c) (1) ~~Any mandated reporter who has knowledge, or~~
22 ~~reasonably suspects, that types of elder or dependent adult abuse~~
23 ~~for which reports are not mandated have been inflicted upon an~~
24 ~~elder or dependent adult, or that his or her emotional well-being~~
25 ~~is endangered in any other way, may report the known or suspected~~
26 ~~instance of abuse.~~

27 (2) ~~If the suspected or alleged abuse occurred in a long-term~~
28 ~~care facility other than a state mental health hospital or a state~~
29 ~~developmental center, the report may be made to the long-term~~
30 ~~care ombudsman program. Except in an emergency, the local~~
31 ~~ombudsman shall report any case of known or suspected abuse to~~
32 ~~the State Department of Health Services and any case of known or~~
33 ~~suspected criminal activity to the Bureau of Medi-Cal Fraud and~~
34 ~~Elder Abuse, as soon as is practicable.~~

35 (3) ~~If the suspected or alleged abuse occurred in a state mental~~
36 ~~health hospital or a state developmental center, the report may be~~
37 ~~made to the designated investigator of the State Department of~~
38 ~~Mental Health or the State Department of Developmental Services~~
39 ~~or to a local law enforcement agency or to the local ombudsman.~~
40 ~~Except in an emergency, the local ombudsman and the local law~~

1 enforcement agency shall report any case of known or suspected
2 criminal activity to the Bureau of Medi-Cal Fraud and Elder
3 Abuse, as soon as is practicable.

4 (4) If the suspected or alleged abuse occurred in a place other
5 than a place described in paragraph (2) or (3), the report may be
6 made to the county adult protective services agency.

7 (5) If the conduct involves criminal activity not covered in
8 subdivision (b), it may be immediately reported to the appropriate
9 law enforcement agency.

10 (d) When two or more mandated reporters are present and
11 jointly have knowledge or reasonably suspect that types of abuse
12 of an elder or a dependent adult for which a report is or is not
13 mandated have occurred, and when there is agreement among
14 them, the telephone report may be made by a member of the team
15 selected by mutual agreement, and a single report may be made
16 and signed by the selected member of the reporting team. Any
17 member who has knowledge that the member designated to report
18 has failed to do so shall thereafter make the report.

19 (e) A telephone report of a known or suspected instance of elder
20 or dependent adult abuse shall include, if known, the name of the
21 person making the report, the name and age of the elder or
22 dependent adult, the present location of the elder or dependent
23 adult, the names and addresses of family members or any other
24 person responsible for the elder or dependent adult's care, the
25 nature and extent of the elder or dependent adult's condition, the
26 date of the incident, and any other information, including
27 information that led that person to suspect elder or dependent adult
28 abuse, as requested by the agency receiving the report.

29 (f) The reporting duties under this section are individual, and
30 no supervisor or administrator shall impede or inhibit the reporting
31 duties, and no person making the report shall be subject to any
32 sanction for making the report. However, internal procedures to
33 facilitate reporting, ensure confidentiality, and apprise supervisors
34 and administrators of reports may be established, provided they
35 are not inconsistent with this chapter.

36 (g) (1) Whenever this section requires a county adult
37 protective services agency to report to a law enforcement agency,
38 the law enforcement agency shall, immediately upon request,
39 provide a copy of its investigative report concerning the reported
40 matter to that county adult protective services agency.

~~(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide to that law enforcement agency a copy of its investigative report concerning the reported matter.~~

~~(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.~~

~~(h) Failure to report physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment.~~

~~SEC. 4.5.—~~

~~SEC. 2. Section 15630.2 is added to the Welfare and Institutions Code, to read:~~

~~15630.2. Any financial institution subject to regulation by the Commissioner of Financial Institutions, or in the case of a federally chartered financial institution, subject to regulation by the Comptroller of the Currency, the Office of Thrift Supervision, or the National Credit Union Administration is a mandated reporter, with respect to elder and dependent adult financial abuse only.~~

~~SEC. 5.—~~

~~SEC. 3. Section 15657 of the Welfare and Institutions Code is amended to read:~~

~~15657. Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, or neglect as defined in Section 15610.57, and that the defendant has been guilty of or has demonstrated or exhibited recklessness, oppression, fraud, or malice in the commission of~~

1 this abuse, or where it is proven by a preponderance of the
2 evidence that a defendant is liable for financial abuse, as defined
3 in Section 15610.30, and that the defendant has been guilty of or
4 has demonstrated or exhibited recklessness, oppression, fraud, or
5 malice in the commission of this abuse, the following shall apply,
6 in addition to all other remedies otherwise provided by law:

7 (a) The court shall award to the plaintiff reasonable attorney's
8 fees and costs. The term "costs" includes, but is not limited to,
9 reasonable fees for the services of a conservator, if any, devoted to
10 the litigation of a claim brought under this article.

11 (b) The limitations imposed by Section 337.34 of the Code of
12 Civil Procedure on the damages recoverable shall not apply.
13 However, the damages recovered shall not exceed the damages
14 permitted to be recovered pursuant to subdivision (b) of Section
15 3333.2 of the Civil Code.

16 (c) The standards set forth in subdivision (b) of Section 3294
17 of the Civil Code regarding the imposition of punitive damages on
18 an employer based upon the acts of an employee shall be satisfied
19 before any damages or attorney's fees permitted under this section
20 may be imposed against an employer.

21 ~~SEC. 6.—~~

22 *SEC. 4.* No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.

